

DEPARTMENT OF STATE REVENUE

REVENUE RULING ST 97-07

December 11, 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax - Sales of Not-For-Profit Organization

Authority: IC 6-2.5-5-26, 45 IAC 2.2-5-58, IC 6-2.5-5-20

The taxpayer requests the Department to rule on the application of sales tax to the sales of a not-for-profit organization.

STATEMENT OF FACTS

The taxpayer is a qualified not-for-profit organization which is organized for educational purposes. The taxpayer sells Indiana history books via catalog year round to members and customers of the taxpayer. The taxpayer requested and received a ruling from the Department in 1986. The ruling stated that the taxpayer was permitted to sell history books to raise money to further its not-for-profit purpose exempt from sales tax, since the books are intended primarily for educational purposes. However, upcoming expansion of the taxpayer's activities has prompted the taxpayer to seek further clarification as to the sales tax treatment of sales which it plans to make.

The taxpayer is currently in the process of constructing a new building. The facility will include a museum/exhibition area, museum shop, cafe, auditorium and administrative office areas. In the museum shop, the taxpayer will sell various historical items, including history, cultural and educational books which support the taxpayer's historic preservation and educational purposes. The following list provides examples of other items, other than books, which will be sold by the taxpayer:

- Posters and maps relating to different historical events (i.e., a map of the Louis and Clark expedition or posters showing the evolution of transportation methods).
- Replicas of historical items held by the taxpayer such as vases, urns, jewelry and furniture.
- Coffee mugs, note cards, T-shirts and other similar novelty items that depict different events and include information which relates to Indiana history.
- Food and beverages in a snack cafe.

The books, posters and maps, replicas of historical items, and novelty items sold by the taxpayer are not all exclusively sold by the taxpayer (some of these items are, also, marketed by proprietary businesses).

The taxpayer will continue to make sales of books through its catalog. It is anticipated that a sampling of museum non-book items, such as vases, mugs and T-shirts will be included in the catalog as time progresses.

DISCUSSION

IC 6-2.5-5-26(a) & (b) state:

- (a) Sales of tangible personal property are exempt from the state gross retail tax, if:
 - (1) the seller is an organization which is granted a gross income tax exemption under IC 6-2.1-3-19, IC 6-2.1-3-20, IC 6-2.1-3-21, or IC 6-2.1-3-22;
 - (2) the organization makes the sale to make money to carry on the not-for-profit purpose for which it receives its gross income tax exemption; and
 - (3) the organization does not make those sales during more than thirty (30) days in a calendar year.
- (b) Sales of tangible personal property are exempt from the state gross retail tax, if:
 - (1) the seller is an organization which is granted a gross income tax exemption under IC 6-2.1-3-19, IC 6-2.1-3-20, IC 6-2.1-3-21, or IC 6-2.1-3-22;
 - (2) the seller is not operated predominantly for social purposes;
 - (3) the property sold is designed and intended primarily either for the organization's educational, cultural, or religious purposes, or for improvement of the work skills or professional qualifications of the organization's members; and
 - (4) the property sold is not designed or intended primarily for use in carrying on a private or proprietary business.

Rule 45 IAC 2.2-5-58, interpreting IC 6-2.5-5-26, provides in relevant part:

- (a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designated and intended primarily for the educational, cultural or religious purposes of such qualified not-for-profit organization and not used in carrying out a private or proprietary

business.

(b) The gross receipts from each sale of tangible personal property by a qualified not-for-profit organization are exempt under this rule only if:

(1) The nature of the property sold will further the educational, cultural or religious purposes of the organization; and

(2) The organization is not carrying on a private or proprietary business with respect to such sales.

(c) Furthering the educational, cultural or religious purpose. The primary purpose of the property sold must be to further the educational, cultural, or religious purpose of the qualified not-for-profit organization.

It should be noted that the "thirty (30) day sales rule" exemption from collecting sales tax contained in IC 6-2.5-5-26(a) is not applicable to this taxpayer. The taxpayer's sales occur more than thirty (30) days in a calendar year, hence, sales tax is to be collected by the taxpayer on all taxable sales commencing on the initial "sales day" of a calendar year.

Secondly, it is clear that for the taxpayer's sales of tangible personal property to qualify for sales tax exemption the sales must be both made in furtherance of the educational purpose of the taxpayer's organization and not sold in the "carrying on" of a private or proprietary business.

It follows then, that the history books that were previously held by the Department to be tax exempt and any other history, cultural or educational books, to the extent that the books are consistent with the taxpayer's educational purpose and are exclusively marketed by the taxpayer, satisfy the above requirements, therefore, can be sold exempt from sales tax. This is true for books sold at the taxpayer's facility or through its catalog.

The posters and maps, replicas of historical items, and coffee mugs, note cards, T-shirts, etc., although possessing a certain limited educational value, are much more of a memento (souvenir) of one's visit to the taxpayer's facility, rather than a true educational tool. These items, therefore, are subject to sales tax.

The food and beverages sold in the taxpayer's snack cafe, obviously, have no educational value and are simply a convenience for those visiting the taxpayer's facility. Accordingly, the food and beverages do not fall within the ambit of the exemption statute and regulation and are specifically taxable pursuant to IC 6-2.5-5-20.

RULING

The Department rules that sales tax is to be collected by the taxpayer on all taxable sales commencing on the initial "sales day" of a calendar year. The Department, also, rules that history, cultural and educational books, to the extent they are consistent with the taxpayer's educational purpose and are exclusively marketed by the taxpayer, are not subject to sales tax whether sold at the taxpayer's location or through the taxpayer's catalog. The Department further rules that the posters and maps, replicas of historical items, coffee mugs, note cards, T-shirts, etc., and the food and beverages sold by the taxpayer in its snack cafe are all subject to sales tax to be collected by the taxpayer.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.